Legislation on the protection of elderly investors in the United States —Recent efforts by the U.S. federal legal system

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Abstract

With the advent of a super-aging society, various efforts are being made in Japan to protect elderly investors. This paper explores better legal systems to protect them by referring to the case of the United States, which has tackled this issue early on. In the United States, to resolve this issue, protecting older people "extensively" and "effectively" from the act of depriving (trying to deprive) of financial assets (called "financial abuse" in the United States) seems to be emphasized. Of these, this paper focuses on "mandatory reporting," a system that imposes a reporting obligation on financial institutions, which can be a powerful weapon for "effective" protection. As the "mandatory reporting system" has been adopted by the U.S. federal legal system recently, this paper investigates its contents, its actual operations and its significance. Then, by comparing it with the system in the State of California, in which Manzawa (2018) investigated how the "mandatory reporting system" has been operated, this paper tries to grasp the "mandatory reporting system" in the United States as a whole.

Keywords: FinCEN, SARs(Suspicious Activity Reports), anti-money laundering, financial exploitation, financial abuse, mandatory reporting, super-aging society, senior investors, elderly customers, United States, bank, broker-dealer, financial institution

JEL Classification: K22

I. Introduction

I-1. Super-aging society

As of October 1, 2018, the population of Japan was 126.44 million, of which 35.58 million were 65 years of age or older (the ratio of the total population was 28.1%).[1] The population aged 65 and over is expected to continue to grow, reaching 36.77 million in 2025 and peaking at 39.35 million in 2042. The aging rate will also continue to rise due to the increase in the number of people aged 65 and over amid the declining total population, with 33.3% (1 in 3) in 2036 and 38.4% (1 in about 2.6) in 2065.

[1] Cabinet Office (2019) "Chapter 1 Situation of Aging" "Section 1 Situation of Aging (1)."

I-2. Initiatives in Japan

Against the background of such super-aging, various frameworks and systems of society as a whole are under pressure to change, and the field of financial services is no exception. As an initiative for financial services in response to the super-aging society in Japan, for example, the Financial Services Agency has added notes on soliciting elderly customers to the "Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc."[2] It requires broker-dealer to take careful solicitation based on the Principle of Suitability[3] for elderly customers, who may suffer from diminished capacity. It also requires them to establish a monitoring system to detect problematic solicitation.

Another recent example is the publication of the Financial Council Market Working Group Report "Asset Formation and Management in an Aging Society" in June 2019[4]. Based on the "Financial Services in an Aging Society (interim report)" published by the Financial Services Agency in July 2018, this publication makes some recommendations about better financial services for an aging society to both individuals and financial service providers. Specifically, it discusses basic points which each individual should have in mind about asset formation and management. It further discusses what the financial service providers and government agencies should do for such individuals; that is, improvement of environment such as enhancement of asset succession system, improvement of financial literacy, enhancement of advisors who can give accurate advice to individuals, and development of laws regarding investment solicitation for the elderly (referring to special rules for investment solicitation for elderly customers, etc. in the Japan Securities Industry Association[5]).

From these efforts, Japan is working on various financial problems in an aging society from the point of asset formation and management, and from the point of protecting elderly customers with thorough enforcement of the Principles of Suitability.

[2] "IV-3-1-2 Control Environment for Customer Solicitation and Explanations (3) Points of Attention Regarding Solicitation to Elderly Customers" in "Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc." (https://www.fsa.go.jp/common/law/guide/kinyushohin/04a.html#04-03). The Financial Services Agency added this section in 2013, and in response to this, the Japan Securities Industry Association has partially revised "Rules on Investment Solicitation, Customer Management, etc. of Association Members" and "Rules for Financial Services Providers" and released "Concept of Article 5-3 of the Rules on Investment Solicitation, Customer Management, etc. of Association Members" (Guidelines for sales by solicitation to elderly customers) with the aim of appropriate investment solicitation related to elderly customers. The "Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc." stipulates that supervision should be carried out while paying attention to these rules of the Japan Securities Dealers Association.

[3] The Principle of Suitability, stipulated in Article 40 of Financial Instruments and Exchange Act, prohibits solicit and sell inappropriate financial products to older customers.

[4] Financial Council Market Working Group (2019)

[5] Regarding sales by solicitation to elderly people, Japan Securities Industry Association treats customers aged 75 and over as an elderly customer, and requires association members to get prior approval from a senior director through interviews with elderly customers in order to solicit "solicitation attention products" which are other than "products that can be solicited" (relatively small price fluctuations, less complicated mechanism). It also requires stricter producers for older customers over 80 years old. Japan Securities Industry Association (2013) pp. 2-3.

I-3. Efforts in foreign countries

In addition to Japan, there are many developed countries that are in an urgent need to build frameworks and systems that can respond to a super-aging society (even if they are not as serious as Japan),[6] and various efforts are being made there.[7] In particular, although the aging rate in 2015 was 14.6%, the United States has been tackling this problem earlier than Japan, as will be described in detail later.[8] However, that approach seems to be different from that of Japan, because the U.S. efforts have gone beyond advocating for thorough enforcement of the Principles of Suitability and emphasizing the importance of asset formation and management. That is, it extends to measures to ensure that appropriate legal actions are taken if elderly people are damaged due to financial abuse in addition to measures to prevent older people from financial fraud.

Specifically, in the United States, acts such as depriving elderly of financial assets are widely regarded as financial abuse (or sometimes called "financial exploitation" interchangeably).[9] The definition of financial abuse varies from federal agency to state,[10] but factors such as the illegal or improper use of elderly's funds, property, etc. appear to be common.[11] The perpetrators of financial abuse range from family members and relatives to foreign fraudsters, and the total damage is said to amount to $ 2.9 billion to $ 36.5 billion annually.[12] In spite of not only the magnitude of the total damage, but also that financial abuse is the most common form of elder abuse and may increase in the future, it has been pointed out that only a small amount has been revealed.[13] Tackling this problem, the United States has focused on how financial abuse is exposed, that is, on whom should be imposed

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6 See Cabinet Office (2019) "Chapter 1 Situation of Aging" and "Section 1 Situation of Aging (2)."

7 For example, IOSCO published a final report in March 2018 entitled "Senior Investor Vulnerability" (see IOSCO (2018)) to protect older investors. It introduces what each country is doing to solve the problem.

8 For example, the U.S. Securities and Exchange Commission (SEC) said in its 2015 annual report, "By 2040, more than one in five Americans will be 65 or older" and "persons 65 years and older control a total of $18.1 trillion in assets, including $10 trillion in financial assets" and "the Office made it a priority to identify methods to help protect elderly investors from financial exploitation." SEC (2015), pp. 10-12.

9 It includes misrepresentation or unfair solicitation by broker-dealers, fraud committed by wrongdoers, such as from unethical caregivers and family members to fraudsters and scam artists. Therefore, it can be also said that efforts to prevent unjustified solicitation to elderly customers in Japan by thorough enforcement of the Principles of Suitability are being taken in the United States as part of the prevention of "financial abuse."

10 For example, the National Center on Elder Abuse, Health and Human Services (HHS) offers the following definition of financial abuse: "the illegal taking, misuse, or concealment of funds, property, or assets of a vulnerable elder." "FinCEN Advisory" (Feb. 2011) p. 1 n.1. FINRA rule 2165(a)(4) stipulates that "the term 'financial exploitation' means: (A) the wrongful or unauthorized taking, withholding, appropriation, or use of a Specified Adult's funds or securities; or (B) any act or omission by a person, including through the use of a power of attorney, guardianship, or any other authority regarding a Specified Adult, to: (i) obtain control, through deception, intimidation or undue influence, over the Specified Adult's money, assets or property; or (ii) convert the Specified Adult's money, assets or property." On the other hand, in the State of California, "(a) 'Financial abuse' of an elder or dependent adult occurs when a person or entity does any of the following: (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence." (Cal. Welfare & Inst. Code § 15610.30 (a)).

11 Consumer Financial Protection Bureau (Feb. 2019) p. 8.

an obligation to report the abuse and on how the obligation should be enforced. In other words, it seems that the rules have been stipulated in the direction of effectively preventing financial abuse, and if they turn out to be less effective, they would be revised.[14]

II. What this paper is going to consider

The author of this paper has already examined efforts to protect elderly investors in the United States, especially focusing on the Financial Industry Regulatory Authority[15] (hereinafter referred to as the FINRA) and the State of California through the paper published in 2018, Manzawa (2018). It attempts to clarify significance of FINRA's two following rules for the protection of older investors effective on February 5, 2018, by comparing with the efforts of the State of California. One FINRA rule is Rule 4512 "Customer Account Information," which requires broker-dealer to maintain "Trusted Contact Person" for each customer. The other is Rule 2165 "Financial Exploitation of Specified Adults," which allows broker-dealer to place a temporary hold on a disbursement of funds or securities from the account of a Specified Adult (including the elderly) if they reasonably believe that financial abuse of the Specified Adult has occurred, etc. Manzawa (2018) introduces that the above FINRA rules are sometimes criticized due to the lack of the "mandatory reporting system" stipulated in the "model law,"[16,17] which is rules for the protection of elderly investors released by the North American Securities Administrators Association[18] (hereinafter referred to as the NASAA). It then investigates how the "mandatory reporting system" has been actually operated in the State of California[19] and pointed out that its effectiveness is not so clear from the point of view of finding and preventing financial abuse for the following rea-

[12] Consumer Financial Protection Bureau (Feb. 2019) p. 8. Patterns of elder financial exploitation are those that use romance (sending money to "lovers" that you meet online) and those that are performed by people who are trusted by the elderly, such as family members (withdrawal cash at an ATM by elderly daughters), theft by a caretaker (withdrawal by caretaker), money mule (transferring money acquired illegally (stolen) electronically, on behalf of others without knowing it). See Consumer Financial Protection Bureau (Feb. 2019) p. 20.

[13] Id., p. 8.

[14] See, for example, Manzawa (2018) III.1.

[15] It was established in July 2007 by the consolidation of the National Association of Securities Dealers (NASD) and the regulation, enforcement and arbitration functions of the New York Stock Exchange (NYSE). All of the broker-dealers are obligated to join FINRA.

[16] See NASAA (2020). The model law is characterized by mandatory reporting requirement, notification to third-parties of potential financial exploitation, the authority to temporarily delay disbursement of funds, immunity from civil and administrative liability for reporting, notifications, and delays and mandatory record-sharing in cases of exploitation with law enforcement and state adult protective services agencies (Id, p. 2). As of January 15, 2020, this model Act has been partially or wholly adopted in 25 states. Id, p. 6.

[17] FINRA's rules stipulate, among the core features of the Model Act, mentioned above, notification to third-parties and authorities to temporarily delay disbursement, but not mandatory reporting, immunity from liability and mandatory record-sharing.

[18] Founded in Kansas in 1919, it is the oldest international (interstate) investor protection agency made up of state regulators. NASAA(2020),p.6.

[19] The law directed to the protection of elder financial abuse in California is the "Elder Abuse and Dependent Adult Civil Protection Act" enacted in 1991 and the "Financial Elder Abuse Reporting Act" enacted in 2005. The former provides an incentive private party to file civil action by increasing the remedies available for abuse and neglect, and in 2004, financial abuse was subject to the law. The latter imposes an obligation on all officers and staff of financial institutions to report suspect of financial abuse for the elderly.

sons.[20] First, the data on the number of reporting cases has not been released. Second, although civil penalty can be imposed in an action by the Attorney General for violations of the reporting obligation, there is no execution data (at least the author was not able to find any). Third, some actions against a financial institution by a private person, the elderly or its family damaged, based on the violation of the reporting obligation are mostly rejected, because the private cause of action for breach of the reporting duty is not recognized. Thus, it concludes there are certainly doubts about the effectiveness of the "mandatory reporting system" and argues its lack may not be a strong reason to criticize the FINRA rules.

On the other hand, this paper will focus on the "federal" efforts to tackle the issue of protection of elderly investors. This issue has traditionally been the sort of thing that is done by the state, but in recent years there has been a remarkable move with the adoption of a "mandatory reporting system" by the federal government. What is the federal "mandatory reporting system" and how is it actually operated? Do the reasons why Manzawa (2018) concludes that California's "mandatory reporting system" is not so effective also apply for one in the federal system? Through these considerations, this paper attempts to deepen an understanding of the "mandatory reporting system," which is often discussed as a core approach to the issue of financial abuse of the elderly in the United States.

III. Federal Efforts to Address the Financial Abuse of the Elderly

Before the paper dives into a "mandatory reporting system," it will take a look at the entire federal approach to the issue of financial abuse. Broadly speaking, there are indirect approaches and direct approaches.

III-1. Indirect approach

The indirect approach is that the federal government gives each state an incentive to work by subsidizing states that are actively working to protect the elderly investors. For example, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (hereinafter referred to as the Dodd-Frank Act) requires the Consumer Financial Protection Bureau (hereinafter referred to as the CFPB) to establish a program to make grants to states which fund technology and equipment or hire staff for enhanced protection of seniors from misleading designations (12 U.S.C. §5537(b)).[21]

In addition, the Elder Justice Act of 2010, which became the first comprehensive federal law on financial fraud against the elderly, also established an institution to achieve fairness regarding the elderly.[22] It also stipulates funding state agencies that seek to protect older

[20] On the other hand, the "Elder Abuse and Dependent Adult Civil Protection Act" was revised drastically in 2008. Since then, the number of civil actions has increased rapidly, and it can be said that it shows its effectiveness to some extent.
[21] In addition, section 911 of the Dodd-Frank Act requires the establishment of an "Investor Advisory Committee" that includes those who represent the interests of the senior citizens. This section is inserted in sec. 39 of Securities Exchange Act of 1934.
[22] https://acl.gov/about-acl/elder-justice-act (last visited June 18, 2021).

people from financial fraud,[23] and can be said to take an indirect approach as well.[24]

III-2. Direct approach

III-2-1. Establishment of "Consumer Financial Protection Bureau" and the "Office of Older American"

Even in the direct approach, the Dodd-Frank Act mentioned above is important. Because the Act requires the establishment of an independent bureau in the Federal Reserve System to be known as the "Bureau of Consumer Financial Protection," which shall regulate the offering of consumer financial products or services under the federal consumer financial laws (12 U.S.C. §5491(a)). It also requires the establishment of the Office of Financial Protection for Older Americans in the CFPB, the functions of which shall include activities designed to facilitate the financial literacy of individuals who are 62 years old or older on protection from unfair, deceptive, and abusive practices (12 U.S.C. §5493 (g)). In response to these, the "Consumer Financial Protection Bureau" (CFPB) and the "Office of Older Americans" were established. Thus, the U.S. federal government acquired power to involve the issue of financial abuse of the elderly directly through the comprehensive exercise of authorities granted by the Dodd-Frank Act to the CFPB to protect the elderly.

III-2-2. Activities to protect the elderly from financial abuse by the CFPB

The CFPB is doing some notable activities on the protection of financial abuse of the elderly. It includes the publication of reports, the exchange of memorandums, and the release of guidelines on the Gramm-Leach Act (hereinafter referred to as the GLBA).

(1) Publication of the report

The CFPB published the "Recommendations and Report for Financial Institutions on Preventing and Responding to Elder Financial Exploitation"[25] in March 2016 (referred to as "March 2016 report"), "Report and Recommendations: Fighting Elder Financial Exploitation through Community Networks"[26] in May 2018 (referred to as "May 2018 report"), "Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends, Office of Financial Protection for Older Americans"[27] in February 2019 (referred to as "February 2019 Report") and "Reporting of Suspected Elder Financial Exploitation by Financial Institutions—An update to the 2016 Advisory and Recommendations for Financial Institutions on Preventing and Responding to Elder Financial Exploitation"[28] in July 2019 (referred to as "July 2019 Report").

First, the "March 2016 Report" recommends the following six things to financial institutions—(i) developing, implementing, and maintaining internal protocols and procedures for

[23] https://acl.gov/programs/elder-justice/state-grants-enhance-adult-protective-services (last visited June 18, 2021).
[24] See Reiser and Eisenkraft (2012) for details.
[25] Consumer Financial Protection Bureau (Mar. 2016).
[26] Consumer Financial Protection Bureau (May 2018).
[27] Consumer Financial Protection Bureau (Feb. 2019).
[28] Consumer Financial Protection Bureau (July 2019).

protecting account holders from elder financial exploitation, (ii) training employees, (iii) detecting elder financial exploitation by harnessing technology, (iv) reporting suspicious activity, (v) protecting older account holders from financial exploitation, (vi) collaborating with other stakeholders.[29] That is, in order to deal with the problem of financial abuse of the elderly, this report requires financial institutions to establish and operate the internal procedures of financial institutions, and have the employees working there acquire knowledge about the problem and report suspicious activity when they notice financial abuse, working with other parties and using the power of technology. Of these, "reporting suspicious activity" is deeply related to the "mandatory reporting system" discussed in this paper. The "February 2019 Report" and "July 2019 Report" (the revised version of "March 2016 Report") also focused on this part[30].

The "February 2019 Report" provides interesting data on suspicious activities targeting the eldely. According to the report, it presents findings based on selected non-public data fields from all SARs (Suspicious Activity Reports, hereinafter referred to as "SARs") relating to elder financial exploitation (EFE) filed with the federal government, the Financial Crimes Enforcement Network (hereinafter referred to as "FinCEN"), by financial institutions between 2013 and 2017.[31] It states that this is the first public analysis of EFE SAR filings since the FinCEN introduced electronic SAR filing[32] with a designated category for "elder financial exploitation" in April 2013.[33]

The Report states that "SARs on elder financial exploitation (EFE SAR) have increased from an average of about 1,300 filed per month in 2013 to about 5,300 filed per month in 2017."[34] It points out "the rapidly increasing number of EFE SAR submissions may be due to a number of factors, including the growing number of older adults, a possible increase in the incidence of elder financial exploitation, growing awareness of FinCEN's 2011 Advisory[35], and the addition of elder financial exploitation as a category on the SAR form."[36]

The Report points out, however, that this does not solve all the problems. It shows that "fewer than one-third of EFE SARs (28 percent) indicate that the filer reported the suspicious activity to a local, state or federal authority"[37], despite an increasing number of reports of financial abuse of the elderly to FinCEN.[38] Then, CFPB published the "July 2019 Report" that encouraged banks and credit unions to report to appropriate local, state or federal au-

[29] Consumer Financial Protection Bureau (Mar. 2016), pp. 12-57.
[30] On the other hand, the"May 2018 report" makes some recommendations to connect various networks for the protection of the elderly in each state. Consumer Financial Protection Bureau (May 2018), pp. 40-41.
[31] Consumer Financial Protection Bureau (Feb. 2019), p. 3.
[32] "FinCEN Instructions"(Oct. 2012).
[33] FinCEN added a designated category for "elder financial exploitation" in the electronic filing form of SARs in April 2013. Consumer Financial Protection Bureau (Feb. 2019), p. 3, 10.
[34] Consumer Financial Protection Bureau (Feb. 2019), p. 11.
[35] "FinCEN Advisory" (Feb. 2011). It states that "in order to assist law enforcement in its effort to target instances of financial exploitation of the elderly, FinCEN requests that financial institutions select the appropriate characterization of suspicious activity in the Suspicious Activity Information section of the SAR form and include the term 'elder financial exploitation' in the narrative portion of all relevant SARs filed."
[36] Consumer Financial Protection Bureau (Feb. 2019), p. 11.
[37] Id., p. 23.
[38] Id., pp. 23-24.

thorities on alleged elder financial exploitation.[39]

(2) Issue of joint memorandum

On August 30, 2017, the CFPB and the U.S. Treasury and FinCEN issued joint memorandum[40] to promote cooperation among financial institutions, law enforcement, and Adult Protective Service agencies (APS) in order to protect the eldely from financial exploitation.

(3) Publication of guidelines on the Gramm-Leach Act (GLBA)

Furthermore, in September 2013, the CFPB, in collaboration with seven regulators[41] including the Federal Reserve Board of Governors, issued the guidance[42] clarifying that reporting suspected elder financial exploitation to appropriate authorities does not generally violate the privacy provisions of the Gramm-Leach-Bliley Act (GLBA).

IV. Enforcement for violations

IV-1. Regulatory framework

The federal regulatory framework regarding reporting of any suspicious transaction by financial institutions is established by two federal statutes: the Bank Secrecy Act[43] and the Securities Exchange Act of 1934 (hereinafter referred to as the "Exchange Act"). The BSA allows the Secretary of the Treasury to "require any financial institution...to report any suspicious transaction relevant to a possible violation of law or regulation."[44] The Secretary has delegated this authority to FinCEN, which promulgated Section 1023.320 in 2002 with the Treasury Department.

Specifically, 31 CFR § 1023.320 (a)(2) required broker-dealer to submit SARs with FinCEN "if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least $5,000, and the broker-dealer knows, suspects, or has reason to suspect that the transaction…: (i) involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity…; (ii) is designed…to evade any requirements of…any…regulations promulgated under the Bank Secrecy Act; (iii) has no business or apparent lawful purpose…; or (iv) involves use of the broker-dealer to facilitate criminal activity."[45] Broker-dealer also has to file a SAR

[39] Consumer Financial Protection Bureau (July 2019), p. 3.

[40] CFPB, U.S. Dep. of the Treasury and FinCEN (Aug. 2017).

[41] In addition, Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, Federal Trade Commission are also participating.

[42] Board of Governors of the Federal Reserve System at el. (Sep. 2013).

[43] 31 USC 5311 et seq.

[44] 31 USC §5318(g)(1). Financial institutions here are banks, casinos, money service providers, securities brokers / dealers, insurance companies, mutual funds, futures commission merchants and introducing brokers in commodities and loans, lenders, and housing government-sponsored enterprises founded by the federal parliament. 31 CFR §1010.100 (t).

[45] Other financial institutions, such as banks, casinos and money service providers, are also required to file SARs to FinCEN by regulation as follows, 31 CFR § 1020.320 for banks, 31 CFR § 1021.320 for casinos and card clubs, 31 CFR § 1022.320 for money service providers, 31 CFR § 1024.320 for mutual funds and 31 CFR § 1025.320 for insurance companies etc.

"no later than 30 calendar days after the date of the initial detection by the reporting broker-dealer of facts that may constitute a basis for filing a SAR."[46]

On the other hand, Rule 17a-8, promulgated by the SEC under authority delegated to it by Congress in the Exchange Act, requires a broker-dealer to "comply with the reporting, recordkeeping and record retention requirements of chapter X of title 31 of the Code of Federal Regulations" (including 31 CFR § 1023.320 as mentioned above). Thus, broker-dealer shall file with FinCEN SARs under the Exchange Act, too. In addition, FinCEN delegated its BSA authority over broker-dealer AML programs to the SEC and SROs including FINRA in 2002.[47]

The FinCEN has issued a number of guidance documents[48] (hereinafter referred as to "FinCEN guidance") about the SAR reporting duty, especially information included in the narrative section of SAR. For example, it gives an instruction that a SAR narrative should include the who, what, when, why, where, and how of the suspicious activity (the "Five Essential Elements").[49] It also instructs to provide "a clear, complete, and concise description of the activity, including what was unusual or irregular that caused suspicion."[50]

The FinCEN also issued an advisory in 2011 that provides potential "red flag"[51] indicators and instructions on how to report elder financial exploitation through SARs in order to assist the financial industry in reporting elder financial exploitation.[52] The advisory states that financial institutions are in a position to play an important role in being aware of financial abuse of the elderly and informing the appropriate authorities of it, because of the fact that they can get to know their customers well.[53]

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[46] 31 CFR § 1023.320 (b)(3).

[47] Pursuant to its supervisory authority over SROs, the SEC reviewed and approved AML best practices submitted by the SROs. It is FINRA Rule 3310 that has governed broker-dealers' AML programs since 2009. Specifically, rule 3310 (b) requires broker-dealers to "establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations". The Rule also requires broker-dealers to "establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations." FINRA Rule 3310(a).

[48] For example, "FinCEN Guidance" (Nov. 2003); "FinCEN Keys" (Nov. 2003); "FinCEN Review" (2000-2013) ["FinCEN Review," published about twice a year between 2000 and 2013, introduced the number of SARs submitted, specific examples and patterns of suspicious activities, and the status of law enforcement], "FinCEN Instructions" (Oct. 2012), etc.

[49] "FinCEN Guidance" (Nov. 2003) pp. 3-4, 11-31 and "FinCEN Keys" (Nov. 2003) pp. 5-13. These guides show specific examples of how to write in the narrative section, listed separately for Depository Institutions, Money Service Businesses, Brokers-Dealers, and Casinos & Card Clubs.

[50] "FinCEN Instructions" (Oct. 2012) p. 110.

[51] "FinCEN Advisory" (Feb. 2011) lists the following as "red flags" relating to banking transactions; "frequent large withdrawals, including daily maximum currency withdrawals from an ATM; sudden non-sufficient fund activity; uncharacteristic nonpayment for services, which may indicate a loss of funds or access to funds; debit transactions that are inconsistent for the elder; uncharacteristic attempts to wire large sums of money; closing of CDs or accounts without regard to penalties". Id, p. 2. It also shows such an example of a "red flag" regarding interactions with customers or caregivers as a "caregiver or other individual shows excessive interest in the elder's finances or assets, does not allow the elder to speak for himself, or is reluctant to leave the elder's side during conversations". Id, p. 2.

[52] Id, p. 1.

[53] Id.

IV-2. Specific cases

This chapter investigates the extent to which actions are filed in case of a breach of reporting obligation required by the Exchange Act, its regulations and FinCEN guidance, such as non-submission of SAR, insufficient description and delay in submission. It also considers the impact of the provisions of the "mandatory reporting system" on civil actions filed by private individuals (victims) against financial institutions.

Thus, it considers the significance of the "mandatory reporting system" in the federal government.

Although none of cases taken up here are related to the elder financial exploitations, they seem to be the same in terms of violation of the SARs obligation executed by the Securities Exchange Commission (hereinafter referred to as SEC) and the discussion will apply to elder financial abuse as well.

(1)SEC v. Alpine Securities Corp.[54]

In this case, the SEC has sued clearing broker Alpine Securities Corporation ("Alpine"), alleging that from 2011 to 2015, Alpine repeatedly filed deficient suspicious activity reports ("SARs") and failed altogether to file other SARs and to maintain support files for SARs when required by law to do so. The SEC asserts that this conduct violated Rule 17a-8 of the Exchange Act.

A.Summary of facts

According to a report based on a survey conducted by FINRA in 2011 and 2012 ("FINRA Report"), Alpine did not file any SARs for over six months in 2011—March 1 through May 10 and August 16 through December 19. The FINRA Report also determined that the narrative sections of the 823 SARs that Alpine did file during the period March 7, 2011 through January 22, 2012 were "substantively inadequate" and criticized Alpine for failing to review requests from FinCEN for information, and for the inadequacies in its AML program, including the program's failure to detect and report suspicious activity.

The SEC Office of Compliance Inspections and Examinations ("OCIE") conducted a one-week on-site inspection of Alpine in July 2014. OCIE reviewed 252 of the over 4,600 SARs filed by Alpine between January 2013 and July 2014 and concluded that 50% of those 252 SARs "failed to completely and accurately disclose key information of which [Alpine] was aware at the time of filing." It also found that the narrative sections of Alpine's SARs "generally contained 'boilerplate' language." It criticized Alpine for omitting mention of many red flags for suspicious activity, such as a customer's civil, regulatory, or criminal history; foreign involvement with the transactions; or concerns about an issuer.

On June 5, 2017, the SEC filed this action, contending that Alpine violated Section 17(a) of the Exchange Act, Rule 17a-8 and FINRA rules by failing to establish and enforce proce-

[54] 354 F.Supp.3d 396 (S.D.N.Y. 2018).

dures reasonably designed to detect and report suspicious activity, and failing to "provide a clear, complete, and concise description of the activity" required by FinCEN guidance.

Both parties made summary judgment motions, and on March 30, 2018, the Federal District Court for the Southern District of New York denied Alpine's motions and granted in part the SEC's motion.[55] Then, On June 22, 2018, Alpine filed an action in the United States District Court for the District of Utah, seeking to enjoin the SEC from continuing this action. Then, the SEC moved to enjoin the Utah Action on July 3. That motion was granted on July 11. While Alpine's appeal of the July 11 injunction is pending, the SEC filed this summary judgment motion on July 13.

On December 11, 2018, the Federal District Court for the Southern District of New York ruled as follows.

B. Judgment

a. About Alpine's Arguments

First, Alpine argues that the SEC has not been empowered to sue for violations of the Bank Secrecy Act ("BSA"). According to Alpine, the Treasury Department, and in particular FinCEN, is empowered to enforce the BSA, and FinCEN has delegated to the SEC only the authority to examine a broker-dealer for compliance with the BSA but not the authority to enforce the BSA. Alpine also makes a related argument that the FinCEN guidance on which the SEC relies was not meant to create rules of law, but rather provided a number of suggestions that broker-dealer could consider when filing SARs.

These arguments are denied for the following reasons.

First, the SEC has its own independent authority to require broker-dealers to make reports and has enforcement authority over those broker-dealer reporting obligations. The section 17(a)(1) of the Exchange Act requires broker-dealers to "make…such reports as the Commission…prescribes as necessary or appropriate in the public interest, for the protection of investors…" One of the rules the SEC has promulgated pursuant to this statute is Rule 17a-8. Rule 17a-8 is a valid exercise of the broad authority Congress conferred on the SEC in section 17(a)(1). Second, the violations that the SEC asserts occurred here arose from Alpine's failure to comply with Section 1023.320's mandates and the SAR Form's instructions, including the requirement that it provide in its SAR narratives a "clear, complete and chronological description of what is unusual, irregular or suspicious about the transactions." 2002 SAR Form at 3. These instructions have the force of law, having been issued as FinCEN regulations following a notice and comment period.

b. About SEC arguments

The SEC makes four categories of claims, each of which is separately addressed below. It asserts that Alpine filed SARs that failed to report in their narrative sections one or more of seven different types of information. It then asserts that Alpine failed to file SARs reporting suspicious sales following large deposits of LPS(low-priced securities). The third set of claims concerns SARs that the SEC asserts were filed later than allowed by Section

[55] SEC v. Alpine Securities Corp., 308 F.Supp.3d 775 (SDNY 2018).

1023.320. Finally, the SEC asserts that Alpine violated the law by not maintaining support files for many of the SARs it filed.

The first category of claims is that Alpine was required by law to include information in 1,593 SAR narratives that Alpine omitted. The omitted information is one or more of its identified red flags and is found in the Alpine support files for each of these SARs. These alleged deficiencies in the SAR narratives fall into seven categories—related litigation, shell companies or derogatory history of stock, stock promotion, unverified issuers, low trading volume in low-priced securities, foreign involvement, five essential elements. As the SEC has shown both that Alpine was required to file 668 SARs, and that the filed SARs were deficient due to the omission of information contained in the Alpine support files that is identified. Therefore, the SEC is entitled to summary judgment partially.

In its second category of claims, the SEC seeks summary judgment as to 3,568 sales of LPS. In each instance, Alpine filed a SAR reflecting a large deposit of an LPS but did not file a SAR reflecting the sales that followed those deposits. The SEC contends that, when a SAR is filed on a large deposit of LPS, a broker-dealer is obligated to file new or continuing SARs when the shares are sold within a short period of time. Section 1023.320 requires reporting of a suspicious transaction "if the transaction or a pattern of transactions of which the transaction is a part meets certain criteria." 31 C.F.R. § 1023.320(a)(2). FinCEN guidance explains that the "[s]ubstantial deposit…of very low-priced and thinly traded securities," followed by the "[s]ystematic sale of those low-priced securities shortly after being deposited" is suspicious and subject to reporting under Section 1023.320. Thus, the SEC's motion is granted.

The third category of claims is that Alpine filed long after the transactions they reported, often more than six months later. Section 1023.320 directs that "a SAR shall be filed no later than 30 calendar days after the date of the initial detection by the reporting broker-dealer of facts that may constitute a basis for filing a SAR under this section." 31 C.F.R. § 1023.320(b)(3). Summary judgment is denied due to the SEC's failure to show that Alpine had an obligation to file these SARs.

The final portion of the SEC's motion is directed to Alpine's failure to maintain support files for 496 of its SARs. A broker-dealer is required to maintain support files for its SARs by Section 1023.320(d). The motion is granted.

From the above, summary judgment is granted for three of the SEC's claims ((1), (2), and (4)).

Following this action, the District Court held that (1) imposition of civil penalties in amount of $12 million was reasonable and (2) the broker-dealer had substantial likelihood of future violations, warranting permanent injunction,[56] which was affirmed by the United States Court of Appeals, Second Circuit in December 2020.[57]

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[56] SEC v. Alpine Securities Corp., 413 F.Supp.3d 235 (S.D.N.Y.2019).
[57] SEC v. Alpine Securities Corp., 982 F.3d 68 (2nd Cir. 2020).

(2) In the Matter of Albert Fried & Company, LLC, 2016 WL 3072175 (June 1, 2016).

This is administrative and cease-and-desist proceedings instituted pursuant to Sections 15(b) and 21C of the Exchange Act against Albert Fried & Com. (“Albert Fried”), a registered broker-dealer.

The SEC contends that Albert Fried willfully violated Section 17(a) of the Exchange Act and Rule 17a-8, because Albert Fried failed to file SARs when it knew, suspected, or had reason to suspect that certain transactions involved the use of the broker-dealer to facilitate fraudulent activity or had no business or apparent lawful purpose from at least August 2010 through October 2015.

The SEC ordered Albert Fried to pay a civil money penalty in the amount of $300,000 as follows. The Albert Fried’s anti-money laundering (“AML”) policies and procedures listed a number of specific examples of suspicious activities that should have triggered internal reviews and in a number of instances SAR filings. The policies highlighted a number of red flags, including widely regarded indicia of potential securities fraud, such as “trading that constitutes a substantial portion of all trading for the day in a particular security,” “heavy trading in low-priced securities,” and “unusually large deposits of funds or securities.” Despite the suspiciousness of its customers’ transactions, the related red flags, and the requirements of its written policies, Albert Fried never filed a SAR during the relevant, more than five-year period. Albert Fried knew, suspected, or had reason to suspect that its customers were using their Albert Fried accounts to facilitate unlawful activity. Furthermore, Albert Fried’s customers’ deposits and subsequent liquidations of penny stocks were suspicious because they lacked any apparent business or lawful purpose. By failing to file SARs with FinCEN as required by the BSA with respect to any of its customers’ activity described above, Albert Fried willfully violated Section 17(a) of the Exchange Act and Rule 17a-8.

(3) Considerations

The Alpine decision is a relatively new case raised by the SEC in 2017. The SEC is said to have begun to enforce affirmatively on the breach of SAR filing obligations in recent years,[58] and some administrative procedures regarding violation of this reporting obligation including the Albert proceedings were also filed in 2017 and 2018.

In addition to the large deposits of low-priced securities, both the Alpine case and Albert proceedings introduced here themselves raised some “red flags” indicating the possibility of suspicious activity. The SEC also instituted some other administrative proceedings in which a broker-dealer failed to timely file continuing activity SARs on previously-filed activity concerning significant unexplained wire activity that appeared to be an attempt to evade the requirements of the BSA,[59] and in which a broker-dealer did not report suspicious activity for certain transactions or patterns of transactions occurring in non-resident alien customer

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[58] That is probably why the Alpine court argued in detail regarding the SARs reporting obligation of broker-dealers (the information to be included in SARs, and the SEC’s authority to enforce the breach of this obligation) which were not discussed in lawsuits before.

[59] In the Matter of Wells Fargo Advisors, LLC, 2017 WL 5248280 (Nov. 13, 2017).

accounts.[60] Although there are still a few enforcement cases related to SARs, it is expected that the number will increase in the future, including cases of financial abuse of the elderly, as they have been actively raised in recent years.

IV-3. Impact on civil lawsuits

(1) Dusek v. JP Morgan Chase & Co., 132 F.Supp.3d 1330 (M.D.Flo., 2015).

A. Summary of facts

In this case, investors who suffered damage from the biggest fraud in history by Bernard L. Madoff sued a financial holding company (D1), its principal banking subsidiary (D2), its principal non-bank subsidiary (D3), its corporate officer (Chief Risk Officer, D4), and its manager of accounts held by the architect of Ponzi scheme (D5, collectively referred to as the defendants), claiming that the defendants' alleged participation in the biggest Ponzi scheme in history constitutes violations of Section 20(a) of the Exchange Act.

Bernard L. Madoff Securities LLC and its affiliates (collectively referred to as Madoff) have a continuous banking relationship with D1 (its predecessor institutions) between 1986 and December 2008 (Bernard L. Madoff was arrested on the 11th). During that time, Madoff held a series of linked direct deposit and custodial account at D1 organized under the umbrella of a centralized "concentration account." This account was the bank account that received and remitted, through a link of disbursement accounts, the overwhelming majority of funds that Madoff's victims "invested" with Madoff. Madoff also maintained linked accounts at D1 through which Madoff held the funds obtained through its Ponzi scheme in, among other things, government securities and commercial paper. Between approximately 1986 and December 2008, the "concentration account" received deposits and transfers of approximately $150 billion, almost exclusively from Madoff investors. The account was not a securities settlement account and the funds deposited by Madoff's victims into the account were not used for the purchase and sale of stocks. Nor were the funds deposited in the account transferred to other broker-dealers for the purchase or sale of securities. At various time between the late 1990s and 2008, employees of various divisions of D1 and its predecessor entities raised questions about Madoff, including questions about the validity of Madoff's investment returns. At no time during this period did D1 personnel communicate their concerns about Madoff to the anti-money laundering personnel responsible for D1's banking relationship with Madoff. Nor did D1 file a SAR in the United States relating to Madoff until after Madoff's arrest. The plaintiffs filed a lawsuit for damages, arguing that the defendants' involvement in Madoff's fraud violated the Exchange Act 20 (a).[61]

On Septemper 17, 2015, the United States District Court for the Middle District of Florida ruled as follows.

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[60] In the Matter of USB Financial Services Inc., 2018 WL 6600987 (Dec. 17, 2018).

[61] Sec. 20 (a) of the Exchange Act stipulates that "Every person who, directly or indirectly, controls any person liable under any provision of this title or of any rule…shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable" 15 U.S.C. §78 t (a).

B.Judgment

Section 20(a) imposes derivative liability on persons that control primary violators of the Act. In order to state a claim under § 20(a), the plaintiffs must allege that (1) Madoff committed a primary violation of the Exchange Act; (2) the defendants had the power to control the general business affairs of Madoff; and (3) that the defendants had the requisite power to directly or indirectly control or influence the specific corporate policy which resulted in primary liability.

Here, the plaintiffs allege that defendants had complete control over Madoff because the banking services provided by D1, were indispensable to Madoff's fraudulent scheme. Because defendants had the power to terminate their banking relationship with Madoff at any time and the obligation to notify the federal banking authorities of Madoff's conduct, the plaintiffs allege that Madoff had to obey any order it received from the defendants. The Court finds that these allegations are insufficient to show that the defendants had the power to control the general affairs of Madoff, or that they had the requisite power to directly or indirectly control or influence the specific corporate policy which resulted in the primary violation. Indeed, the plaintiffs' allegations regarding Madoff's refusal to allow the defendants to conduct due diligence on its operations plainly contradict any claim that the defendants controlled Madoff.

In addition, the plaintiffs do not provide a convincing reason why the defendants would knowingly involve themselves in Madoff's inevitably doomed Ponzi scheme.

(2) Mansor v. JP Morgan Chase Bank, N.A., 183 F.Supp.3d 250 (D.Mass., 2016).

A. Summary of facts

This action arises out of a 150 million-dollar Ponzi scheme, which was perpetrated by an entity known as Millennium Bank and its principal, William Wise (referred to as Wise collectively), and was implemented using accounts that had been opened at Washington Mutual Bank (referred to as WaMu). The plaintiffs, victims of the Wise fraud, brought an action against JP Morgan Chase Bank (acquirer of WaMu, hereinafter sometimes referred to as JPMorgan or Bank), asserting JPMorgan is liable for aiding and abetting common law fraud (Count I) and for negligence with knowledge of fiduciary relationship (Count II) by assisting Wise and its associates in carrying out its fraudulent scheme.

On April 26, 2016, the United States District Court for the District of Massachusetts ruled as follows.

B.Judgment

Count I (claim for aiding and abetting common law fraud)

Under Massachusetts law liability for aiding and abetting a tort attaches where: (1) the defendant provides substantial assistance or encouragement to the other party; and (2) the defendant has unlawful intent, i.e., knowledge that the other party is breaching a duty and the intent to assist that party's actions.

The plaintiff alleges that JPMorgan substantially assisted Wise in carrying out its fraudulent scheme by: (i) taking direct actions to reverse restraints placed on the Wise accounts as

the result of fraud alerts, so that the illegal customer (Wise) activities could continue; (ii) ignoring or failing to implement established written protocols of the Bank intended to prevent customer fraud; (iii) failing to initiate expedited account closure procedures at a time when the Bank had specific knowledge that the failure to do so would cause larcenous activity to continue; (iv) failing to report known illegal and larcenous activities to law enforcement agencies, in violation of federal anti-money laundering laws, including, but not limited to 1020.320(b)(3). Of these, this court finds that the claim of (i), WaMu's president's alleged actions in lifting the restraints in October 2008, January 2009 and February 2009 is sufficient to satisfy substantial assistance requirement. The plaintiff's claim that during the course of her employment at WaMu, the president acquired specific knowledge of the illegal account activities, but engaged in various efforts to assist Wise to pursue its fraudulent enterprise. Her alleged post-acquisition conduct in removing the account restraints can reasonably be viewed as a continuation of that effort because it would have allowed the Wise scheme to continue.

The plaintiff's allegations are also sufficient to show that the president was acting with an unlawful intent when she took steps to lift the restraints on the Wise accounts.

On the other hand, other than the claim of (i), it is insufficient to affirm the liability for aiding and abetting common law fraud. For example, for the failure to carry out written procedures in (ii) and the failure to promptly close the account in (iii), this court finds that such inaction does not constitute the type of "substantial assistance" necessary to support a claim for aiding and abetting fraud. Substantial assistance occurs when a defendant affirmatively assists, helps conceal or fails to act when required to do so, thereby enabling the breach of a duty to occur. As a general matter, the mere inaction of an alleged aider and abettor constitutes substantial assistance only if the defendant owes a fiduciary duty directly to the plaintiff. In the instant case, the plaintiffs have not alleged facts establishing the existence of a fiduciary relationship between the Bank and the Wise's investors, and there is no legal basis for finding that such a relationship existed.

In addition, the claim of (iv) is not accepted. The relevant authority established that "there is no private right of action for a bank's failure to report suspicious activity under the federal anti-money laundering regulations." Consequently, JPMorgan's alleged failure to report suspicious account activity pursuant to the federal anti-money laundering laws and regulations does not support a claim for relief. "No one is entitled to the benefit of regulatory intervention."

Count II (claim for negligence)

To make out a claim for negligence, the plaintiff must show that the defendant owed him a duty of reasonable care, that the defendant committed a breach of that duty, that damage resulted, and that there was a causal relation between the breach of duty and the damage. The issue here is whether JPMorgan owed the plaintiffs a duty of reasonable care. This court finds that the complaint fails to establish such a duty, and that Count II must be dismissed on this basis.

A bank generally has no duty to monitor the activities of authorized account-holders and

prevent misappropriation. As both of the parties recognize, however, there is a limited exception to this rule: (1) there is a fiduciary relationship between the customer and the non-customer, (2) the bank knows or ought to know of the fiduciary relationship, and (3) the bank has actual knowledge or notice that a diversion is to occur or is ongoing.

Generally, a fiduciary relationship exists where a party reposed confidence in another and reasonably relied on the other's superior expertise and knowledge. However, a business relationship does not become a general fiduciary relationship merely because an uninformed customer reposes trust in another. In order to determine whether a fiduciary relationship exists under Massachusetts law, courts typically look to the degree of discretion a customer entrusts to the other party.

The complaint sets forth no facts that would support the existence of a fiduciary relationship between Wise and its customers. In particular, there are no facts describing the nature of the relationship between Wise and the plaintiffs or suggesting that the investors entrusted Wise with discretion to select their investments. Nor are there any facts indicating that Wise even offered investment advice to their customers.

Those facts suggest that the investments were intended to be non-discretionary, and that no fiduciary relationship existed.

(3) Considerations

First, in the Dusek decision, the Federal District Court for the Middle District of Florida denied Sec. 20(a) of the Exchange Act liability for the financial institution which failed to submit SARs on suspicious activity of its customer, Madoff. The court cited a case which was very hesitant to impose liability on financial institutions such as banks as a controlling person,[62] and found that the financial institution had no "power to control" over the fraudster which is a necessary requirement for affirming the responsibility, mentioned above.

Next, in the Mansor decision, the U.S. District Court of the Massachusetts held liability of the financial institution for aiding and abetting common law fraud, not because the bank was aware of the fraud of its account holder and failed to notify the regulator or to close the account, but because the president took direct actions to lift restraints placed on the fraudster's accounts as the result of fraud alerts, which enabled them to continue illegal activity. That is, the direct action constituted to "substantial assistance or encouragement" to the illegal customer, which is one of factor for liability. On the other hand, this case denied liability for negligence, because banks are not obliged to investigate every possible illegal activity and prevent them generally, except when there is a fiduciary relationship between the bank's customers and others, and the bank is aware of the relationship. In this case, there was no such relationship, so the bank was not liable for fraud committed by the customer.

Manzawa (2018) introduced the similar civil actions filed by victims of financial abuse against a financial institution which did not prevent the illegal act of its customer in the State of California.[63] What the California court said in these actions is consistent with the judg-

[62] 132 F.Supp.3d 1330,1351 (M.D.Flo., 2015).

ment of the federal district court introduced here. That is, the California Court stated the "substantial assistance" to the fraudsters provided by financial institutions with unlawful intent was needed in order to affirm aiding and abetting liability. The court also denied liability for negligence because the relationship between the bank and the customer is not essentially a fiduciary relationship, but a contractual relationship. It argued that the bank was not obliged to monitor or investigate every customer transaction, unless the bank undertakes a special obligation under the contract.

In addition, the Mansor case shows that there is no private right of action for a bank's failure to report suspicious activity under the federal anti-money laundering regulations. California courts also denied the private cause of action and contend that the scope of tort liability should not be expanded or the requirements for pursuing civil liability should not be relaxed because of the existence of a provision for reporting obligations.[64]

As argued in the Dusek case, a financial institution may be imposed controlling person liability based on the sec. 20(a) of the Exchange Act. However, the "power to control" over the fraudster, which is a necessary requirement for affirming this liability, is not easily recognized. It seems to be highly likely that the liability will not be imposed on financial institutions that merely failed to investigate, discover and report suspected fraudulent transactions.

V. Conclusion

As mentioned in this article, II, the author of this paper has questioned the effectiveness of the "mandatory reporting system" in the State of California for the following three reasons in the paper published in 2018: (i) the data on the number of reporting cases has not been released, (ii) although civil penalty can be imposed in an action by the Attorney General for violations of the reporting obligation, there is no execution data and (iii) the private right of action for breach of the SAR reporting duty is not recognized, and there is no favorable effect on the civil lawsuits by the victims.

Looking at the "mandatory reporting system" in the federal law, as we have already seen, (i) the data showing the increase in the number of reporting cases are available, and (ii) the SEC has begun to institute enforcement actions affirmatively in recent years. However, with regard to (iii), in almost the same situation as in California, relaxation of the requirement for civil liability and expansion of liability are denied. Nonetheless, from (i) and (ii), it seems that the federal "mandatory reporting system" is at least more effective than the system in the State of California.

However, as mentioned above, the increase in reports of financial abuse of the elderly to

[63] Manzawa (2018), pp. 24-28.

[64] Both the federal court and the State Court of California have made it clear that the imposition of reporting obligations on financial institutions by the statute does not change the traditional tort doctrine of not obligating banks to investigate and detect fraud. In addition, it has held that the mere inaction, simply not reporting a suspected fraudulent transaction without investigating, does not meet the "substantial assistance" requirement for aiding and abetting liability in most jurisdictions, other than in the federal or state law of California. Manzawa (2018) pp. 24-28.

FinCEN does not lead to reports to state or federal authorities.[65] It is also pointed out that many law enforcement agencies have the problem of not being able to directly access FinCEN's SAR database.[66] "The July 2019 report"[67] and a memorandum of understanding between financial institutions[68] may be part of an effort to address this issue. It seems that we need to look carefully to see if the situation improves.[69]

References

Board of Governors of the Federal Reserve System at el. (Sep. 2013), "National Credit Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults," https://www.fdic.gov/news/news/press/2013/interagency-guidance-on-privacy-laws-and-reporting-financial-abuse-of-older-adults.pdf?source=govdelivery.

Cabinet Office (2019) "White Paper on Aging Society in the First Year of Reiwa," https://www8.cao.go.jp/kourei/whitepaper/w-2019/html/zenbun/s1_1_1.html.

CFPB, U.S. Dep. of the Treasury and FinCEN (Aug. 2017), "Memorandum on Financial Institution and Law Enforcement Efforts to Combat Elder Financial Exploitation," https://files.consumerfinance.gov/f/documents/201708_cfpb-treasury-fincen_memo_elder-financial-exploitation.pdf.

Consumer Financial Protection Bureau (Mar. 2016), "Recommendations and report for financial institutions on preventing and responding to elder financial exploitation," https://files.consumerfinance.gov/f/201603_cfpb_recommendations-and-report-for-financial-institutions-on-preventing-and-responding-to-elder-financial-exploitation.pdf.

Consumer Financial Protection Bureau (May 2018), "Report and Recommendations: Fighting Elder Financial Exploitation through Community Networks," https://files.consumerfinance.gov/f/documents/bcfp_fighting-elder-financial-exploitation_community-networks_report.pdf.

Consumer Financial Protection Bureau (Feb. 2019), "Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends," Office of Financial Protection for Older Americans, https://files.consumerfinance.gov/f/documents/cfpb_suspicious-activity-reports-elder-financial-exploitation_report.pdf.

Consumer Financial Protection Bureau (July 2019), "Reporting of Suspected Elder Financial Exploitation by Financial Institutions—An update to the 2016 Advisory and Recommendations for Financial Institutions on Preventing and Responding to Elder Financial Exploitation," https://files.consumerfinance.gov/f/documents/cfpb_

[65] Consumer Financial Protection Bureau (Feb. 2019), p. 23.
[66] Id.
[67] Consumer Financial Protection Bureau (July 2019).
[68] CFPB, U.S. Dep. of the Treasury and FinCEN (Aug. 2017).
[69] In addition, the February 2019 report points out that the types of elder financial exploitation differ greatly depending on the FinCEN filer (for example, deposit institutions account for 27% of fraud by third parties, and 64% by family / nursing care, while in cases of money service providers 69% for the former and 20% for the latter), and it seems that how to reflect the difference in regulations is also an issue. Consumer Financial Protection Bureau (Feb. 2019) p. 19.

suspected-elder-financial-exploitation-financial-institutions_report.pdf.
Financial Council Market Working Group (2019), "Asset Formation and Management in Aging Society," https://www.fsa.go.jp/singi/singi_kinyu/tosin/20190603/01.pdf.
FinCEN (Oct. 2000), "SAR Activity Review" Issue 1. ["FinCEN Review"], https://www.fincen.gov/sites/default/files/shared/sar_tti_01.pdf.
FinCEN (2000-2013), "SAR Activity Review" Issue 1-23. ["FinCEN Review"], FinCEN (Nov. 2003), "Guidance on Preparing a Complete and Sufficient Suspicious Activity Report Narrative" ["FinCEN Guidance"], https://www.fincen.gov/sites/default/files/shared/sarnarrcompletguidfinal_112003.pdf.
FinCEN (Nov. 2003), "Keys to Writing a Complete & Sufficient SAR Narrative" ["FinCEN Keys"], https://www.fincen.gov/resources/statutes-regulations/guidance/sar-narrative-guidance-package.
FinCEN (May 2006), "SAR Activity Review" Issue 10. ["FinCEN Review"], https://www.fincen.gov/sites/default/files/shared/sar_tti_10.pdf.
FinCEN (May 2009), "SAR Activity Review" Issue 15. ["FinCEN Review"], https://www.fincen.gov/sites/default/files/shared/sar_tti_15.pdf.
FinCEN (Feb. 2011), "Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation" (FIN-2011-A003). ["FinCEN Advisory"], https://www.fincen.gov/sites/default/files/advisory/fin-2011-a003.pdf.
FinCEN (Oct. 2012), "FinCEN Suspicious Activity Report (FinCEN SAR) Electronic Filing Instructions ["FinCEN Instructions"], https://www.fincen.gov/sites/default/files/shared/FinCEN%20SAR%20ElectronicFilingInstructions-%20Stand%20Alone%20doc.pdf.
IOSCO (2018) "Senior Investor Vulnerability," https://www.iosco.org/library/pubdocs/pdf/IOSCOPD595.pdf.
Japan Securities Dealers Association (2013),"Sales by solicitation to elderly customers," http://www.jsda.or.jp/katsudou/public/bosyu/files/20130913_sannkou_JK.pdf.
Julie Goldsmith Reiser and Michael B. Eisenkraft (2012), "Twenty-Fifth Annual Corporate Law Symposium: Implementing Dodd-Frank Wall Street Reform and Consumer Protection Act: Dodd-Frank's Protections for Senior Citizens: An Important, yet Insufficient Step", 81 U. Cin. L. Rev. 521.,
NASAA (2020), "NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation" LEGISLATIVE TEXT & COMMENTARY FOR 2020 LIGISLATIVE SESSION, http://serveourseniors.org/wp-content/uploads/2020/01/NASAA-Model-Act-Updated-Commentary-for-2020-Session-012820.pdf.
SEC (2015), "Report on Activities Fiscal Year 2015," https://www.sec.gov/files/sec-investor-advocate-report-on-activities-2015.pdf.
Yoko Manzawa (2018) "Efforts to protect financial assets of the elderly—America as an example," http://www.jsda.or.jp/about/kaigi/chousa/JCMF/manzawaronbun.pdf.